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5 **UNITED STATES DISTRICT COURT**

6 **DISTRICT OF NEVADA**

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8 SEAN EDWARD DOUGLAS-MCCLAIN,

9 Plaintiff,

10 vs.

11 JUDGE JEANNIE HUA, *et al.*,

12 Defendant.

Case No. 2:22-cv-00227-APG-VCF

ORDER

APPLICATION TO PROCEED *IN FORMA*
PAUPERIS (EFC NO. 1)

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14 Pro se plaintiff Sean Edward Douglas-McClain filed an application to proceed in forma pauperis
15 (IFP). ECF No. 1. I deny Douglas-McClain's IFP application without prejudice.

16 **DISCUSSION**

17 Under 28 U.S.C. § 1915(a)(1), a plaintiff may bring a civil action "without prepayment of fees or
18 security thereof" if the plaintiff submits a financial affidavit that demonstrates the plaintiff "is unable to
19 pay such fees or give security therefor." The Ninth Circuit has recognized that "there is no formula set
20 forth by statute, regulation, or case law to determine when someone is poor enough to earn IFP status."
21 *Escobedo v. Applebees*, 787 F.3d 1226, 1235 (9th Cir. 2015). An applicant need not be destitute to
22 qualify for a waiver of costs and fees but he must demonstrate that because of his poverty he cannot pay
23 those costs and still provide himself with the necessities of life. *Adkins v. E.I DuPont de Nemours &*
24 *Co.*, 335 U.S. 331, 339 (1948). If the court determines that an individual's allegation of poverty is
25 untrue, "it shall dismiss the case." 28 U.S.C. § 1915(e)(2).

1 The applicant's affidavit must state the facts regarding the individual's poverty “with some
2 particularity, definiteness and certainty.” *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)
3 (citation omitted). If an individual is unable or unwilling to verify his or her poverty, district courts have
4 the discretion to make a factual inquiry into a plaintiff's financial status and to deny a request to proceed
5 in forma pauperis. See, e.g., *Marin v. Hahn*, 271 Fed.Appx. 578 (9th Cir. 2008) (finding that the district
6 court did not abuse its discretion by denying the plaintiff's request to proceed IFP because he “failed to
7 verify his poverty adequately”). “Such affidavit must include a complete statement of the plaintiff's
8 personal assets.” *Harper v. San Diego City Admin. Bldg.*, No. 16cv00768 AJB (BLM), 2016 U.S. Dist.
9 LEXIS 192145, at 1 (S.D. Cal. June 9, 2016). Misrepresentation of assets is sufficient grounds in
10 themselves for denying an in forma pauperis application. *Cf. Kennedy v. Huibregtse*, 831 F.3d 441, 443-
11 44 (7th Cir. 2016) (affirming dismissal with prejudice after litigant misrepresented assets on in forma
12 pauperis application).

13
14 The District of Nevada has adopted three types of IFP applications: a “Prisoner Form” for
15 incarcerated persons and a “Short Form” (AO 240) and “Long Form” (AO 239) for non-incarcerated
16 persons. The Long Form requires more detailed information than the Short Form. The court typically
17 does not order an applicant to submit the Long Form unless the Short Form is inadequate, or it appears
18 that the plaintiff is concealing information about his income for determining whether the applicant
19 qualifies for IFP status. When an applicant is specifically ordered to submit the Long Form, the correct
20 form must be submitted, and the applicant must provide all the information requested in the Long Form
21 so that the court is able to make a fact finding regarding the applicant's financial status. See e.g. *Greco v.*
22 *NYE Cty. Dist. Jude Robert Lane*, No. 215CV01370MMDPAL, 2016 WL 7493981, at 3 (D. Nev. Nov.
23 9, 2016), report and recommendation adopted sub nom. *Greco v. Lake*, No. 215CV001370MMDPAL,
24 2016 WL 7493963 (D. Nev. Dec. 30, 2016).

1 Plaintiff Douglas-McClain submitted the Short Form IFP application. ECF No. 1. In response to
2 Question No. 2, he states that he is self-employed and has his own small business. *Id.* at 1. He states that
3 he makes about \$1,500 in gross pay/wages about twice monthly. *Id.* In response to Question No. 3(a),
4 however, which asks about income from a business, profession, or other self-employment for the past 12
5 months, plaintiff responded that he has no income from self-employment. *Id.* He does not provide
6 information about what he receives and expects to receive in the future. His response to Question No. 3
7 contradicts his response to Question No. 2.

8 Since it appears plaintiff has his own business, makes about \$3,000 a month from that business,
9 and stated in response to the next question that he does not have his own business, I cannot determine
10 whether the applicant qualifies for IFP status. I will give plaintiff one opportunity to file a complete IFP
11 application. Since plaintiff has provided conflicting information on the Short Form, I order that the
12 plaintiff must complete the Long Form application. He must fully respond to each of the questions on
13 the Long Form and he cannot leave anything blank. Since he must complete the Long Form, plaintiff is
14 required to provide comprehensive information regarding his sources of income, employment history,
15 bank accounts, assets, monthly expenses, age, and his years of schooling, among other things.
16

17 I deny plaintiff's IFP application without prejudice. I give plaintiff 30 days to file an updated IFP
18 application. Plaintiff must fully answer all applicable questions and check all applicable boxes. Plaintiff
19 may alternatively pay the filing fee in full. Since I deny plaintiff's IFP application, I do not screen his
20 complaint now.

21 ACCORDINGLY,

22 I ORDER that Douglas-McClain's application to proceed in forma pauperis (ECF No. 1) is
23 DENIED without prejudice.

24 I FURTHER ORDER that Douglas-McClain has until Thursday, March 24, 2022, to file an
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1 updated IFP application using the Long Form or pay the filing fee as specified in this order. Failure to
2 timely comply with this Order may result in case closure or a recommendation for dismissal with
3 prejudice.


4 **NOTICE**

5 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
6 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
7 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
8 may determine that an appeal has been waived due to the failure to file objections within the specified
9 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985).

10 This circuit has also held that (1) failure to file objections within the specified time and (2)
11 failure to properly address and brief the objectionable issues waives the right to appeal the District
12 Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d
13 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).
14 Pursuant to LR IA 3-1, the plaintiff must immediately file written notification with the court of any
15 change of address. The notification must include proof of service upon each opposing party's attorney,
16 or upon the opposing party if the party is unrepresented by counsel. Failure to comply with this rule may
17 result in dismissal of the action.
18

19 IT IS SO ORDERED.

20 DATED this 22nd day of February 2022.

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22 _____
23 CAM FERENBACH
24 UNITED STATES MAGISTRATE JUDGE
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